

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 3, 2019

Lyle W. Cayce
Clerk

No. 18-10056

In the Matter of: LIFE PARTNERS HOLDINGS, INCORPORATED

Debtor.

LIFE PARTNERS CREDITORS' TRUST; ALAN M. JACOBS,

Appellants,

v.

ACCELERATING WEALTH, L.L.C.; A. CHRIS OSTLER; ADRIANNE SCHWANKE; AMERICAN MONEY GROUP, INCORPORATED; B. CLIFF WRIGHT; BARRY ENGOLIO; BRAD WILEMON; BRIAN MURRAY; BRUCE C. SANDELIN; CALIFORNIA RETIREMENT PLANS, L.L.C.; CHARLES LANZA; CHARTER FINANCIAL GROUP, L.L.C.; CODY BIGGS; CUB INVESTMENTS; RONALD W. HUCKABEE, JR.; D;G INVESTMENT GROUP, INCORPORATED; DAVID WATLINGTON; DON WELLS; DONALD BERGIS; FINANCIAL NECESSITIES NETWORK, INCORPORATED; FRANK BENISCHECK; SCOTT SHEPARD; GREGG M. CUNE; GUY SMITH; JARED M. ELSON; JERI NIEMEYER; KENNETH NELSON; LIFE SETTLEMENT INVESTMENT GROUP; RETIREMENT RESCUE, L.L.C.; ROBERT QUICK; RUSSELL NIEMAN; STEVE CHAMBERS; STEVE RINGO; TOMMY CAPERTON,

Appellees.

In the Matter of: LPI FINANCIAL SERVICES, INCORPORATED

Debtor.

LIFE PARTNERS CREDITORS' TRUST; ALAN M. JACOBS,

Appellants,

No. 18-10056

v.

GREGG M. CUNE

Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:16-CV-266
USDC No. 4:17-CV-108

Before ELROD, HIGGINSON, and ENGELHARDT, Circuit Judges.

JENNIFER WALKER ELROD, Circuit Judge:*

This case is one of five related adversary proceedings arising out of the Chapter 11 bankruptcies of Life Partners Holdings, Inc.; Life Partners, Inc. (LPI); and LPI Financial Services (collectively, the “LP Entities”), in which the Life Partners Creditors’ Trust asserts claims against various groups of LP Entities Licensees. We described the factual background and much of the relevant procedural history in our recent opinion in *Life Partners Creditors’ Trust v. Cowley*, No. 17-11477 (5th Cir. May 31, 2019). We note one procedural difference that is material to the disposition of Count 11 in Creditors’ Trust’s pleadings: unlike in *Cowley*, Creditors’ Trust sought leave to amend Count 11 in a written motion before the district court’s judgment of dismissal. Thus, the Federal Rule of Civil Procedure 59(e) standard does not apply to that claim, and the proposed amended complaint demonstrates that repleading would not

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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have been futile. The district court therefore abused its discretion in declining to grant leave to amend Count 11. *See Brown v. Taylor*, 911 F.3d 235, 247 (5th Cir. 2018) (district court abused its discretion in denying leave to amend where plaintiff offered a proposed amendment that would not be futile and had not repeatedly failed to cure deficiencies).

Beyond the above distinction, the arguments before the court in this case are substantially the same as those in *Cowley*, and the live pleadings are parallel in all important respects. Accordingly, we AFFIRM the district court's judgment of dismissal as to Counts 5, 8, and 12. However, we REVERSE the dismissal of Counts 1–4,¹ 6, 9, 10, and 11 and REMAND them for further proceedings consistent with this opinion.

¹ As in *Cowley*, we affirm the district court's dismissal of Count 2 only as to transfers from Life Partners Holdings that occurred before January 20, 2011, and transfers from LPI and LPI Financial Services that occurred before May 19, 2011. We also affirm the district court's dismissal of Counts 3 and 4 only as to transfers made by Life Partners Holdings before January 20, 2013, and transfers made by LPI and LPI Financial Services before May 19, 2013.